

48A C.J.S. Judges § 19

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

I. In General

B. Nature, Creation, Regulation, and Abolition of Office in General

§ 19. Abolition of office

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The office of judge may generally be abolished by the authority which created it. However, when the office of judge is created by the constitution, it cannot be abolished by the legislature or local authorities.

Unless prohibited by the constitution, an office created by the legislature may be abolished by the legislature.¹ Thus, when the office of a judge is created by statute, pursuant to the authority of the constitution,² or by city, county, or township officials pursuant to the authority of constitutional or statutory provisions,³ it may be abolished in the manner in which it was created.

When the office of judge is created by the constitution, it cannot be abolished by the legislature.⁴ Similarly, when the office is created by the legislature, it cannot be abolished by local authority acting for a city, county, township, or other municipality⁵ unless express statutory permission is given to such authority to do so.⁶ Additionally, a legislature cannot terminate the office of a judge elected or appointed pursuant to a constitutional law for a constitutional term by devolving the duties of the office on another official.⁷

Where the constitution establishes the office but does not fix the number of judges, the legislature may abolish unnecessary judges by abolishing districts.⁸ Likewise, a state's constitution may expressly authorize the legislature to increase or decrease the number of judges⁹ provided that the act decreasing the number of judges does not affect the right of any judge to hold his or her office for his or her full term.¹⁰ Courts have also held that the legislature cannot deprive a judge of his or her office before expiration of the term by abolishing the office or court served by such judge.¹¹ However, the status of a candidate for a circuit court judgeship does not insulate him or her, on the theory of being a "quasi-incumbent," from the authority of the legislature to abolish the judgeship.¹²

Effect of void act.

If a statute attempting to abolish the office of a judge is void and the incumbent does not resign, he or she remains a judge de jure.¹³

CUMULATIVE SUPPLEMENT

Cases:

Elimination of judgeship following retirement of judge was not warranted; judgeship was responsible for all the caseload in one county and was primarily assigned to cases in two other counties, and, while the judicial district in which the judgeship was located was showing an slight overage in judicial officer need, the administrative challenges in providing timely judicial service to large, rural districts did not favor the elimination of judgeship. [NDCC § 27-05-02.1. Matter of Vacancy in Judgeship No. 6, 2017 ND 181, 899 N.W.2d 273 \(N.D. 2017\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 Mass.—[Opinions of the Justices to the Senate, 372 Mass. 883, 363 N.E.2d 652 \(1977\).](#)
 Ind.—[Corn v. City of Oakland City, 415 N.E.2d 129 \(Ind. Ct. App. 1981\).](#)
- 2 Mass.—[Opinions of the Justices to the Senate, 372 Mass. 883, 363 N.E.2d 652 \(1977\).](#)
- 3 Mich.—[Millard v. Guy, 334 Mich. 694, 55 N.W.2d 210 \(1952\).](#)
 As to power which creates a public office having the power to abolish it, generally, see [C.J.S., Officers and Public Employees § 19.](#)
- 4 Ind.—[Corn v. City of Oakland City, 415 N.E.2d 129 \(Ind. Ct. App. 1981\).](#)
- 5 N.J.—[Krieger v. Jersey City, 48 N.J. Super. 280, 137 A.2d 437 \(App. Div. 1958\), judgment aff'd, 27 N.J. 535, 143 A.2d 564 \(1958\).](#)
- 6 Mich.—[Millard v. Guy, 334 Mich. 694, 55 N.W.2d 210 \(1952\).](#)
- 7 Mo.—[Musser v. Coonrod, 496 S.W.2d 8 \(Mo. 1973\).](#)
- 8 Fla.—[In re Advisory Opinion To The Governor, 281 So. 2d 328 \(Fla. 1973\).](#)
- 9 § 18.
- 10 Ala.—[King v. Campbell, 988 So. 2d 969 \(Ala. 2007\).](#)
 Fla.—[State ex rel. Landis v. Thompson, 125 Fla. 466, 170 So. 464 \(1936\).](#)
- 11 Ind.—[Corn v. City of Oakland City, 415 N.E.2d 129 \(Ind. Ct. App. 1981\).](#)

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Ala.—[King v. Campbell](#), 988 So. 2d 969 (Ala. 2007).

No vested right

Candidates for new judgeships eliminated by legislative act before a primary election had no vested interest in the judgeships, and thus, the act eliminating the judgeships did not violate the candidates' due process rights under the state constitution.

Ill.—[Bridges v. State Bd. of Elections](#), 222 Ill. 2d 482, 305 Ill. Dec. 640, 856 N.E.2d 445 (2006).

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Or.—[State ex inf. Evans v. Holman](#), 73 Or. 18, 144 P. 429 (1914).

As to the definition of a judge de jure, see § 8.

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